

2003 DRAFTING REQUEST**Bill**Received: **08/01/2003**Received By: **rkite**Wanted: **As time permits**

Identical to LRB:

For: **Lorraine Seratti (608) 266-3780**By/Representing: **Andy Potts**This file may be shown to any legislator: **NO**Drafter: **rnelson2**

May Contact:

Addl. Drafters: **mshovers**

Subject: **Nat. Res. - parks and forestry**
Munis - zoning
Counties - zoning

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Seratti@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nuisance actions relating to forestry operations

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 08/27/2003			_____			
/P1	rnelson2 09/25/2003	jdye 10/29/2003	pgreensl 10/29/2003	_____	lnorthro 10/29/2003		
		jdye		_____			

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		10/29/2003					
/1	rnelson2 11/04/2003	jdye 11/05/2003	jfrantze 11/05/2003		sbasford 11/05/2003	lnorthro 11/14/2003	
/2	mshovers 01/05/2004	jdye 01/06/2004 jdye 01/06/2004	rschluet 01/06/2004		sbasford 01/06/2004	sbasford 01/06/2004	

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12 MES 1/5/04

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Instructions: *11/4 Redraft with removal of p. 1, 11 & 9
after "per year".*

See Attached

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pg 8 sell

FE Sent For:

<END>

Kite, Robin

From: Potts, Andrew
Sent: Wednesday, July 30, 2003 5:11 PM
To: Kite, Robin
Subject: Right to forest act

Robin,

Here's what we have so far.

Andy

Seratti

Definitions:

"Department" means the Department of Natural Resources.

"Forest" means a tract of land in which at least 80% of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year, whether of commercial or noncommercial species, or formerly having tree cover and not currently developed for nonforest use, including woodlands, woodlots, windbreaks, and shelter belts.

"Generally accepted forestry management practices" means those forestry management practices as defined by department administrative rules.

"Landowner" means the possessor of a fee interest in land or a tenant, lessee, occupant, or other person in lawful control of land.

"Timber" means live or dead trees, including, but not limited to: bark, foliage, wood and firewood.

1) Forestry operations shall not be found to be a public or private nuisance if the forestry operations alleged to be a nuisance conform to generally accepted forestry management practices. Operations that are not a public or private nuisance when conducted in accordance with generally accepted forestry practices include, but not limited to any of the following:

- a) Visual changes due to the removal of vegetation or timber.
- b) Noise from forestry equipment used in normal operations.
- c) Removal of vegetation or timber on a forest adjoining the property of another landowner.
- d) The use of chemicals normally utilized in forestry operations.

2) Forestry operations that are in conformance with generally accepted forestry management practices shall not be found to be a public or private nuisance as a result of any of the following:

- (a) A change in ownership or size.
- (b) Cessation or interruption of forestry operations.
- (c) Enrollment in governmental forestry or conservation programs.
- (d) Adoption of new forestry technology.
- (e) A change in zoning or land use designation.

3) In any nuisance action in which forestry operations are alleged to be a nuisance, if the defendant landowner or forestry operation prevails, the landowner or forestry operation may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the landowner or forestry operation in connection with the defense of the action, together with reasonable and actual attorney fees.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3047/P1

RPN:.....

Mon 11/3

jd

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; relating to: actions against forestry operations and granting
2 rule-making authority. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: ✓

3 SECTION 1. 823.075 of the statutes is created to read:

4 **823.075 Actions against forestry operations.** (1) In this section: ✓

5 (a) "Department" means the department of natural resources. ✓

6 (b) "Forest" means a parcel of land in which at least 80 percent of the parcel is
7 producing or is capable of producing at least 20 cubic feet of merchantable timber, ✓
8 as defined in s. 77.81 (3), per acre per year or a parcel of land that formerly had tree
9 cover and is not currently developed for a use other than as a forest.

****NOTE: The last part of this definition is too broad. It seems to cover any land that once was part of a forest and is now a prairie or in some other dormant state, which could mean a lot of current land in Wisconsin.

1
2 (c) "Generally accepted forestry management practices" means forestry
3 management practices that maximize sound management of a forest, as determined
4 by the department by rule.

5 (2) A forestry operation is not a nuisance if the forestry operation alleged to be
6 a nuisance conforms to generally accepted forestry management practices. ^{Any of} The
7 following are examples of forestry operations that are not a nuisance if conducted in
8 conformance with generally accepted forestry management practices:

9 (a) Removal of vegetation, dead or live trees, bark, foliage, or wood, resulting
10 in visual changes in a forest.

11 (b) Noise from forestry equipment.

12 (c) Removal of vegetation, dead or live trees, bark, foliage, or wood from a forest
13 adjoining the property of another person.

14 (d) Use of chemicals that are normally used in forestry operations.

15 (3) A forestry operation that conforms to generally accepted forestry
16 management practices is not a nuisance if that operation results in any of the
17 following:

18 (a) A change in ownership or size of a forest.

19 (b) Cessation or interruption of forestry operations.

20 (c) Enrollment of all or part of the forest in governmental forestry or
21 conservation programs.

22 (d) Adoption of new forestry technology.

23 (e) A change in the zoning or land use designation of the forest.

24 (4) In any action in which a forestry operation is alleged to be a nuisance, if the
25 party who was alleged to commit the nuisance prevails, the court may award that

1 party the actual and necessary costs incurred in the action, and, notwithstanding s.
2 814.04 (1), reasonable attorney fees.

3 (END)



800N (11/4)
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3047/P1

RPN:jld:pg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

- 1 AN ACT *to create* 823.075 of the statutes; **relating to:** actions against forestry
2 operations and granting rule-making authority.

Analysis by the Legislative Reference Bureau

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 (c) “Generally accepted forestry management practices” means forestry
2 management practices that maximize sound management of a forest, as determined
3 by the department by rule.

4 (2) A forestry operation is not a nuisance if the forestry operation alleged to be
5 a nuisance conforms to generally accepted forestry management practices. Any of
6 the following are examples of forestry operations that are not a nuisance if conducted
7 in conformance with generally accepted forestry management practices:

8 (a) Removal of vegetation, dead or live trees, bark, foliage, or wood resulting
9 in visual changes in a forest.

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11 (c) Removal of vegetation, dead or live trees, bark, foliage, or wood from a forest
12 adjoining the property of another person.

13 (d) Use of chemicals that are normally used in forestry operations.

14 (3) A forestry operation that conforms to generally accepted forestry
15 management practices is not a nuisance if that operation results in any of the
16 following:

17 (a) A change in ownership or size of a forest.

18 (b) Cessation or interruption of forestry operations.

19 (c) Enrollment of all or part of the forest in governmental forestry or
20 conservation programs.

21 (d) Adoption of new forestry technology.

22 (e) A change in the zoning or land use designation of the forest.

23 (4) In any action in which a forestry operation is alleged to be a nuisance, if the
24 party who was alleged to commit the nuisance prevails, the court may award that

1 party the actual and necessary costs incurred in the action and, notwithstanding s.
2 814.04 (1), reasonable attorney fees.

3 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3047/1ins
RPN:jld:pg

insert anl:

Under current law, if a business, property, or action of a person creates a public nuisance, the party damaged by that nuisance can bring an action for the damages caused by the nuisance or to abate the nuisance. A county or municipality may bring an action to abate a public nuisance, such as a place where a controlled substance is illegally distributed, sold, or manufactured. A "nuisance" is generally defined as an action that annoys or disturbs a person in possession of his or her property, *and* makes, *making* the use or occupation of that property physically uncomfortable. Currently, nuisances include places where illegal gambling occurs, dilapidated buildings, drug houses, and criminal gang houses.

This bill provides that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Under the bill, forestry operations include removal of vegetation or dead trees, noise from forestry equipment, and ~~the~~ use of chemicals that are normally used in forestry operations. In addition, the bill provides that a forestry operation that conforms to generally accepted forestry management practices and that results in any of the following is not a nuisance:

1. Change in ownership or size of a forest.
2. Interruption of forestry operations.
3. Enrollment of part or all of the forest in governmental forestry programs.
4. Adoption of new forestry technology.
5. Change in the zoning or land use designation of the forest.

The bill also allows a person who is alleged to commit the nuisance to receive his or her costs, including attorney fees, if he or she prevails in the action alleging a nuisance.

Northrop, Lori

From: Potts, Andrew
Sent: Friday, November 14, 2003 3:27 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3047/1 Topic: Nuisance actions relating to forestry operations

It has been requested by <Potts, Andrew> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3047/1 Topic: Nuisance actions relating to forestry operations

Nelson, Robert P.

From: Potts, Andrew
Sent: Thursday, December 04, 2003 12:57 PM
To: Nelson, Robert P.
Subject: LRB 3047

Bob,

We're looking to clarify the section dealing with zoning and planning. I think we should renumber the current section 1 to section 4 and add the new sections 1-3 below.

Section 1 59.69(4h) of the statutes is created to read:

59.69(4?) Forestry Operations

The board may not enact an ordinance or adopt a resolution prohibiting forestry operations that are in accordance with generally accepted forestry management practices, as defined in 823.075(1)(c). *Am; (4)(a)*

Section 2 60.61(3f) of the statutes is created to read:

60.61(3?) Forestry Operations

The town board may not enact an ordinance prohibiting forestry operations that are in accordance with generally accepted forestry management practices, as defined in 823.075(1)(c). *RA; (60.61)(2)(a)*

Section 3 62.23(7)(hg) of the statutes is created to read:

62.23(7)(?) Forestry Operations

The governing body of a city may not enact an ordinance prohibiting forestry operations that are in accordance with generally accepted forestry management practices, as defined in 823.075(1)(c).

Section 4

823.075(3) A forestry operation that conforms to generally accepted forestry management practices is not a nuisance regardless of any of the following:

Delete 823.075(3)(e)

Thanks

Andy



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-30474-2

RPN:jld:jf

fmr

2003 BILL

WANTED
Tues
9AM

Regen

- 1 AN ACT *to create* 823.075 of the statutes; **relating to:** actions against forestry
2 operations and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, if a business, property, or action of a person creates a public nuisance, the party damaged by that nuisance can bring an action for the damages caused by the nuisance or to abate the nuisance. A county or municipality may bring an action to abate a public nuisance, such as a place where a controlled substance is illegally distributed, sold, or manufactured. A "nuisance" is generally defined as an action that annoys or disturbs a person in possession of his or her property and makes the use or occupation of that property physically uncomfortable. Currently, nuisances include places where illegal gambling occurs, dilapidated buildings, drug houses, and criminal gang houses.

This bill provides that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Under the bill, forestry operations include removal of vegetation or dead trees, noise from forestry equipment, and use of chemicals that are normally used in forestry operations. In addition, the bill provides that a forestry operation that conforms to generally accepted forestry management practices ~~and that results in any of the following~~ is not a nuisance. *regardless of any of the following*

1. Change in ownership or size of a forest.
2. Interruption of forestry operations.
3. Enrollment of part or all of the forest in governmental forestry programs.
4. Adoption of new forestry technology.

BILL

5/ ~~Change in the zoning or land use designation of the forest.~~

The bill also allows a person who is alleged to commit the nuisance to receive his or her costs, including attorney fees, if he or she prevails in the action alleging a nuisance.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION ~~11~~ 823.075 of the statutes is created to read:

823.075 Actions against forestry operations. (1) In this section:

(a) "Department" means the department of natural resources.

(b) "Forest" means a parcel of land in which at least 80 percent of the parcel is producing or is capable of producing at least 20 cubic feet of merchantable timber, as defined in s. 77.81 (3), per acre per year.

(c) "Generally accepted forestry management practices" means forestry management practices that maximize sound management of a forest, as determined by the department by rule.

(2) A forestry operation is not a nuisance if the forestry operation alleged to be a nuisance conforms to generally accepted forestry management practices. Any of the following are examples of forestry operations that are not a nuisance if conducted in conformance with generally accepted forestry management practices:

(a) Removal of vegetation, dead or live trees, bark, foliage, or wood resulting in visual changes in a forest.

(b) Noise from forestry equipment.

(c) Removal of vegetation, dead or live trees, bark, foliage, or wood from a forest adjoining the property of another person.

(d) Use of chemicals that are normally used in forestry operations.

BILL

(3) A forestry operation that conforms to generally accepted forestry management practices is not a nuisance ^{regard less} if that operation results in any of the following:

(a) A change in ownership or size of a forest.

(b) Cessation or interruption of forestry operations.

(c) Enrollment of all or part of the forest in governmental forestry or conservation programs.

(d) Adoption of new forestry technology.

~~(e) A change in the zoning or land use designation of the forest.~~

(4) In any action in which a forestry operation is alleged to be a nuisance, if the party who was alleged to commit the nuisance prevails, the court may award that party the actual and necessary costs incurred in the action and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(END)

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3047/2insMES
RPN&MES:jld:jf

Insert ANL

Under current law, cities, villages, towns that are authorized to exercise village powers, certain other towns, or counties (political subdivisions) are authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, the location and use of buildings, structures, and land for various purposes, and the areas within which activities such as agriculture, forestry, and mining may be conducted.

Under this bill, no political subdivision may enact a zoning ordinance that prohibits forestry operations that are in accordance with generally accepted forestry management practices.

Insert 2-1

SECTION 1. 59.69 (4) (a) of the statutes is amended to read:

59.69 (4) (a) The areas within which agriculture, forestry, industry, mining, trades, business and recreation may be conducted, except that no ordinance enacted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices as defined under s. 823.075 (1) (c)

History: 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105.

SECTION 2. 60.61 (2) (a) of the statutes is renumbered 60.61 (2) (a) (intro.) and amended to read:

60.61 (2) (a) (intro.) Regulate, restrict and determine the areas within which agriculture, forestry, mining and recreation may be conducted; except that no ordinance enacted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices as defined under s. 823.075 (1) (c) 2. The location of roads, schools, trades and industries; the 3. The location, height, bulk, number of stories and size of buildings and other structures; the 4. The percentage of a lot which may be occupied; the 5. The size

INS 2-1
cont

of yards, courts and other open spaces; the ⁹3. The density and distribution of
population; the ⁷4. The location of buildings designed for specified uses; the ⁸5. The
trades, industries or purposes that may be engaged in or subject to regulation; and
the ⁹6. The uses for which buildings may not be erected or altered.

History: 1983 a. 532, 538; 1985 a. 136, 316; 1991 a. 255; 1993 [✓] 246, 301, 400, 414, 491; 1995 a. 27 s. 9130 (4); 1995 a. 201; 1997 a. 3; 2001 a. 50

SECTION 3. 62.23 (7) (b) of the statutes is amended to read:

62.23 (7) (b) *Districts*. For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. No ordinance enacted or regulation adopted under this subsection [✓] may prohibit forestry operations that are in accordance with generally accepted forestry management practices ³ as defined under [✓] s. 823.075 (1) ^(c) The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, economic design and location of public and private utilities and community facilities and insure adequate standards of construction and planning. Such regulations may also provide for the development of the land in such



districts with one or more principal structures and related accessory uses, and in such districts the regulations need not be uniform.

History: 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50.

(end ins 2-1)